**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**O.O.C.J.**

**WRIT PETITION NO. 2657 OF 2006**

Amarjit Singh Nagi & Others. ...Petitioners.

V/s.

The State of Maharashtra and Others. ...Respondent.

Ms. Rajani Iyer, Sr. Advocate with N.N. Bhadrashete with V.k. Aggarwal for the Petitioners.

Mr. Kirit Nakani for Respondent No.6.

Ms. Rupa D. Kadam for Respondent Nos.4,5 and 7.

Ms. Mamta Sudh, A.G.P. for the State.

.....

**CORAM : DR. D.Y. CHANDRACHUD,J.**

**18TH OCTOBER, 2006.**

**P.C. :**

1. Rule, by consent of Counsel returnable forthwith.

Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing and final disposal

2. On 28th January 2005, a notice was issued to the members of the Managing Committee of Vithalnagar Co-operative Housing Society Ltd. calling upon them to show cause as to why an Administrator be not appointed in exercise of powers conferred by Section 78(1) of the Maharashtra Co-operative Societies Act, 1960. On 9th September 2005, an order was passed by the Deputy

Registrar, Co-operative Societies, K (West) Ward, the third Respondent to these proceedings, by which in exercise of powers conferred by Section 78(1), the Managing Committee was superseded and the fourth Respondent was appointed as an Administrator. The order of the third Respondent was carried in Appeal. The Appeal was admitted by an order dated 6th October 2005 but interim stay was refused by the Divisional Joint Registrar. A Revision Application was, therefore, filed under Section 154 of the Act. The revision was dismissed by an order dated 23rd August 2006 by the Minister for Co-operation.

3. Under Section 78(1)(a)(ii) of the Maharashtra Co-operative Societies Act, 1960, the term of an administrator is to be for a period not exceeding six months. The Registrar, however, is empowered at his discretion to extend the term by a further period not exceeding three months. However, the total period is not to exceed nine months in the aggregate.

4. In the present case, it is an admitted position that the term of the Administrator has expired. Under sub-Section 4 of Section 78, the Administrator is under an obligation upon the expiry or termination of the term of office, to arrange for the constitution of a new Committee in accordance with the bye laws of the Society. The proviso to sub-Section 4 however stipulates that if a new

Committee is not, or cannot be constituted at the expiry or termination of the term of Office of the Administrator, for any reason beyond his control, the term of Office of the Administrator shall be considered to be extended until the new Committee is constituted.

5. Counsel appearing on behalf of the fourth Respondent is unable to inform this Court as to why elections have not been held expeditiously after the period of nine months expired in any event on 30th June 2006. During the course of the hearing of these proceedings, a serious grievance has been raised in regard to the conduct of the fourth Respondent. But, having regard to the final directions which are proposed to be issued, it is not necessary to enquire into them at this stage. The ends of justice would be served if a direction is issued to the Registrar of Co-operative Societies to appoint an Officer under his control from the Department of Co-operation, other than the second, third and fourth Respondents herein for the purpose of holding elections expeditiously, so that the new Managing Committee can be constituted in accordance with the bye laws of the Society. The mandate of the statute is that after the term of the Office of the Administrator has expired, a new Managing Committee has to be constituted. The Appeal filed against the order appointing the Administrator has now been rendered infructuous, since the term of the Office of the Administrator has expired. This position is

not disputed either on behalf of the Petitioner or on behalf of the Respondents. Appeal No.180 of 2005 shall, therefore, stand disposed of as infructuous, with a view to facilitate the holding of early elections.

6. In these circumstances, the Registrar of Co-operative Societies is directed to appoint forthwith, and in any event no later than two weeks from today, an Officer under his control and supervision other than the second, third and fourth Respondents for holding the elections to the Managing Committee of the fifth Respondent. The elections shall be held and concluded expeditiously and in any event no later than 31st December 2006. In so far as the prayer for monetary damages as against the seventh and eighth Respondents is concerned, no such relief can be granted in the exercise of the Writ Jurisdiction under Article 226 of the Constitution of India. The Petitioner is at liberty to pursue such remedies as are available in law.

7. In the meantime, until the elections are held, the fourth Respondent, whose term has expired shall not take any major policy decisions.

8. The Petition is accordingly disposed of. No order as to costs.

---